

MEMORANDUM

September 24, 2004

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: CLYDE LOCKWOOD, ESQ.
Patterson, Ritner, Lockwood, Gartner & Jurich

OWEN L. GALLAGHER
Principal Deputy County Counsel
General Litigation Division

RE: Pedro Mendoza, a minor by and through his Guardian Ad Litem,
Adelina Flores, Adelina Flores, individually vs. County of Los Angeles
Compton Superior Court Case No. TC015994

DATE OF
INCIDENT: September 13, 1997

AUTHORITY \$1,200,000, Plus Assumption of the Medi-Cal Lien Not to Exceed
REQUESTED: \$47,747.18

COUNTY
DEPARTMENT: DEPARTMENT OF HEALTH SERVICES

CLAIMS BOARD ACTION:

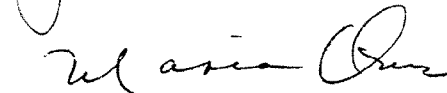
☐ Approve

☐ Disapprove

☒ Recommend to Board of
Supervisors for Approval


_____, Chief Administrative Office
ROCKY A. ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on September 15, 2004

SUMMARY

This is a recommendation to settle for \$1,200,000, the medical negligence lawsuit brought by Pedro Mendoza for the injuries he sustained during his birth at King/Drew Medical Center on September 13, 1997. The State, having paid \$47,747.18 for the provision of Medi-Cal care, has a claim for reimbursement, which will be settled by the County.

LEGAL PRINCIPLES

The County is liable for the failure of its hospital and medical staff to provide services consistent with the appropriate standard of care for the circumstances encountered.

SUMMARY OF FACTS

On September 12, 1997, at 6:32 a.m., Adelina Flores, a 30-year-old woman, pregnant with her first child, at 40-weeks gestation, was seen at King/Drew Medical Center with complaints of contractions. Ms. Flores was admitted to the Labor and Delivery Unit, and at 12:15 p.m., she was given medication to induce labor (Pitocin). At 9:45 p.m., Ms. Flores' cervix was completely dilated, and she was encouraged to push with each contraction to assist in the delivery process.

On September 13, 1997, at 1:00 a.m., Adelina Flores suffered a seizure, and she was given medication to treat seizures. Immediately after Ms. Flores' seizure, fetal monitoring indicated a severe slowing of the fetal heartbeat (bradycardia), a sign of fetal distress, which lasted from 1:01 a.m., to 1:13 a.m. A decision was made to stabilize Ms. Flores' condition, and, once she was stabilized, to perform a Cesarean section delivery.

At 1:30 a.m., it was noted that the fetal heartbeat did not react normally while Adelina Flores was pushing, a sign that the fetus may be in distress. At 1:50 a.m., Ms. Flores signed a written consent for a Cesarean section delivery. By 2:00 a.m., Ms. Flores' condition was stabilized. At 2:12 a.m., it was noted that the fetal heartbeat still did not react normally to the pushing. At 2:13 a.m., Ms. Flores was taken to the operating room to perform a Cesarean section delivery. However, surgery did not start until 2:58 a.m.

At 3:03 a.m., Ms. Flores gave birth to Pedro Mendoza, a male infant weighing 3,770 grams (6 lbs. 12 oz.). An analysis of blood drawn at 4:52 a.m., indicated a high level of acid in his blood (metabolic acidosis), which is evidence that Pedro Mendoza was exposed to extremely low levels of oxygen (hypoxia).

On September 27, 1997, Pedro Mendoza was discharged. He currently has a defect of motor power and coordination related to damage of the brain (cerebral palsy), and a neurological weakness on the right side of his body (hemiparesis) resulting in a minimally functional right arm, which medical experts will attribute to the effects of hypoxia occurring prior to his birth on September 13, 1997.

DAMAGES

If this matter proceeds to trial, the claimant will likely seek the following:

Pedro Mendoza,	
Future Medical Care	\$ 9,300,000
Loss of Future Earnings	\$ 1,300,000
Pain and Suffering (MICRA limit)	\$ <u>250,000</u>
TOTAL	\$10,850,000

The proposed settlement includes:

Pedro Mendoza,	
Cash Settlement	\$ 873,334
Attorneys Fees (MICRA Estimate)	\$ 251,666
Costs of Litigation	\$ <u>75,000</u>
TOTAL	\$1,200,000

A portion of the recommended settlement may be directed by claimants to be used to purchase an annuity. The amount and structure of the annuity has not been selected at this time.

STATUS OF CASE

The current trial date has been vacated pending approval of this settlement.

Expenses incurred by the County of Los Angeles in the defense of this case through September 14, 2004, are attorneys fees of \$76,785 and \$51,563 in costs.

The total cost to the County of Los Angeles, as a result of this settlement, is as follows:

Indemnity (Settlement Amount)	\$1,200,000.00
County Attorneys Fees and Costs	\$ 128,348.00
Medi-Cal Lien	\$ <u>47,747.18</u>
TOTAL	\$1,376,095.18

EVALUATION

Medical experts will be critical of the delay of medical personnel in performing a Cesarean section delivery until 2:58 a.m., on September 13, 1997, after Adelina Flores' condition had been stabilized. The delay in performing an earlier delivery of Pedro Mendoza fell below the standard of care, and is directly responsible for the results observed here.

We join with our private counsel, Patterson, Ritner, Lockwood, Gartner & Jurich, and our claims administrator, Octagon Risk Services, Inc., in recommending settlement in the amount of \$1,200,000, and payment of the Medi-Cal lien in the amount of \$47,747.18.

The Department of Health Services concurs in this settlement.